

48A C.J.S. Judges § 278

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

2. Interest and Relationship

a. Interest

(2) Nature and Degree of Interest

§ 278. Pecuniary, proprietary, or individual nature of interest

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West's Key Number Digest

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The interest which may disqualify a judge from hearing a suit is either a personal, pecuniary, or proprietary interest or one affecting individual rights of the judge, and liability or gain must turn on the outcome of the suit.

The interest in the subject matter of the litigation which disqualifies a judge is a direct pecuniary or property interest,¹ or one which involves some individual right or privilege,² whereby a liability or pecuniary gain must occur on the outcome of the suit.³ The interest that disqualifies a judge is a personal interest.⁴ Substantial interest within a statute relating to disqualification of a judge normally refers to pecuniary or beneficial interest.⁵

If the interest is of a pecuniary or proprietary nature, the judge is disqualified,⁶ and the degree or extent of the interest is immaterial.⁷ Such an interest will debar the judge from sitting in the cause no matter how small or trifling it may be.⁸ As otherwise stated, recusal is required whenever financial conflicts of interest exist regardless of whether those conflicts affect the outcome of the case.⁹ However, in some circumstances, a judge may avoid disqualification if the judge discloses and divests the financial interest.¹⁰

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Footnotes

- 1 U.S.—*U. S. v. Will*, 449 U.S. 200, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980); *Withrow v. Larkin*, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

Kan.—*State v. Sawyer*, 297 Kan. 902, 305 P.3d 608 (2013).

Tex.—*Kennedy v. Wortham*, 314 S.W.3d 34 (Tex. App. Texarkana 2010).

Judge and spouse
If the judge and the judge's spouse have an economic interest in a party litigant, the judge should first consider whether that interest would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired; should disclose the interest on the record; and should recuse him- or herself if the answer to the question is "yes," whether or not the economic interest is de minimis.

Ark.—*Huffman v. Arkansas Judicial Discipline and Disability Com'n*, 344 Ark. 274, 42 S.W.3d 386 (2001).

2 Ark.—*Noland v. Noland*, 326 Ark. 617, 932 S.W.2d 341 (1996).

3 U.S.—*Withrow v. Larkin*, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

Ark.—*Worth v. Benton County Circuit Court*, 351 Ark. 149, 89 S.W.3d 891 (2002).

Tex.—*Williams v. Viswanathan*, 65 S.W.3d 685 (Tex. App. Amarillo 2001), on reconsideration in part, 64 S.W.3d 624 (Tex. App. Amarillo 2001).

4 U.S.—*Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986).

Cal.—*Haas v. County of San Bernardino*, 27 Cal. 4th 1017, 119 Cal. Rptr. 2d 341, 45 P.3d 280 (2002).

Ill.—*People v. Hayden*, 338 Ill. App. 3d 298, 272 Ill. Dec. 802, 788 N.E.2d 106 (5th Dist. 2003).

5 U.S.—*In re Virginia Elec. & Power Co.*, 539 F.2d 357 (4th Cir. 1976); *Rite Aid Corp. v. Board of Pharmacy of State of N. J.*, 421 F. Supp. 1161 (D.N.J. 1976).

6 Pa.—*Dennis v. Southeastern Pennsylvania Transp. Authority*, 833 A.2d 348 (Pa. Commw. Ct. 2003).

Tex.—*Gulf Maritime Warehouse Co. v. Towers*, 858 S.W.2d 556 (Tex. App. Beaumont 1993), writ denied, (Nov. 17, 1993).

- 7 Tex.—*Gulf Maritime Warehouse Co. v. Towers*, 858 S.W.2d 556 (Tex. App. Beaumont 1993), writ denied, (Nov. 17, 1993).
- 8 U.S.—*In re Virginia Elec. & Power Co.*, 539 F.2d 357 (4th Cir. 1976).
- Tex.—*Marsh v. Ferguson*, 262 S.W. 805 (Tex. Civ. App. Waco 1924).
- 9 U.S.—*Shell Oil Co. v. U.S.*, 672 F.3d 1283 (Fed. Cir. 2012).
- 10 U.S.—*Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120 (2d Cir. 2003).

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